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**ALCATEL INTERNET WORKING SYSTEM, INC.
ALCATEL-INTELLECTUAL PROPERTY DEPARTMENT
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PLANO, TX 75075**

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JUL 1 8 2003

OFFICE OF PETITIONS

In re Application of :
Christopher Haywood et al :
Application No. 09/154,966 : DECISION GRANTING PETITION
Filed: September 17, 1998 : UNDER 37 CFR 1.183
Atty Dkt No. 39892/JEC/X2/111480 :

This is a decision on the petition filed June 26, 2003, under 37 CFR 1.47(a), which is being treated under 37 CFR 1.183 to waive 37 CFR 1.131 to the extent that it requires that all of the named inventors execute the declaration filed thereunder.¹

The petition is granted to the extent *infra*.

The record discloses that, on February 3, 2003, a reply in the form of an amendment and an executed declaration [under 37 CFR 1.131] were received as a response to the Office action of September 27, 2002. However, on April 22, 2003, the examiner herein mailed a Notice of Non-Responsive Amendment stating that the reply received on February 6, 2003 was not fully responsive to the September 27, 2002 Office action because joint inventor Mr. Christopher Haywood did not sign the declaration filed on February 6, 2003. The Office action set a one (1) month or (30) day period from the mailing of the Office action within which to supply the omission or correction in order to avoid the abandonment of the application.

¹ It is noted that the examiner, in the Office action of April 22, 2003, directed applicants' attention to 37 CFR 1.47 if one of the inventors refuses to sign or cannot be reached to execute the declaration. However, when an inventor who executed the original declaration [oath] is refusing or cannot be found to execute a required supplemental declaration, it is possible that the requirement may be suspended or waived in accordance with 37 CFR 1.183. Note MPEP 603. Therefore, the submission of a petition under 37 CFR 1.47 is not the appropriate avenue of relief in this instance. Therefore, the petition has been treated under the provisions of 37 CFR 1.183 to waive the provisions of 37 CFR 1.131.

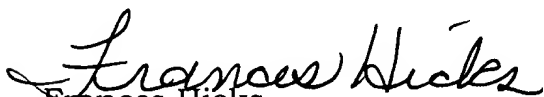
In reply, petitioner asserts that, on May 21, 2003, a copy of a declaration, along with a letter, was mailed to Mr. Haywood at his last known address, which was delivered to Mr. Haywood on May 22, 2003. The accompanying letter requested that the declaration be executed by Mr. Haywood and returned to petitioner no later than June 17, 2003. However, as of the date of the petition, petitioner herein has not received the executed declaration from Mr. Haywood. Evidence has been provided to show that Mr. Haywood did receive the communication requesting execution of the declaration under 37 CFR 1.131.

While the declaration under 37 CFR 1.131 indicates that the named inventors contributed to the conception of the claimed invention, which is under rejection, only joint inventor Geoffrey C. Stone has executed a declaration under 37 CFR 1.131 in support of establishing conception of the claimed invention prior to January 7, 1997.

As noted in MPEP 715.04, an adequate showing may lead to acceptance of a declaration under 37 CFR 1.131 executed by less than all the named inventors of the claimed subject matter in question. Under the facts presented, it is agreed that justice requires waiver of the rules to the extent that they require an executed declaration under 37 CFR 1.131 by joint inventor Haywood. However, the favorable decision herein does not relieve applicants from their burden to establish that the invention was completed before the date of the reference(s) and that the claimed invention was the product of the joint inventors. See In re Carlson, 79 F.2d. 900, 27 USPQ 400 (CCPA 1935).

This application is being forwarded to Technology Center AU 2665 for further examination.

Inquiries regarding this communication may be directed to the undersigned at (703) 305-8680.



Frances Hicks

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy



Conferree: Brian Hearn